

UNITED STATES DISTRICT COURT  
DISTRICT OF NEVADA

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FRANCINE DYCHIUCHAY,

Case No. 2:15-cv-00558-JCM-PAL

Plaintiff,

ORDER

v.

DAVID GRIESHABER, et al.,

Defendants.

Presently before the court is defendants' David Grieshaber ("Grieshaber") and Aradia Investments, Inc. ("Aradia") (collectively "defendants") motion for attorney's fees. (Doc. # 22). Plaintiff Francine Dychiuchay ("Dychiuchay") filed a response in opposition. (Doc. # 23). To date, defendants have not filed a reply.

**I. Background**

This action arises from the parties' agreements to operate websites containing explicit photographs of plaintiff. In 2000, the parties entered into a verbal agreement to operate a website, FrancineDee.com, as partners. (Doc. # 1-1 at 13). In August 2003, the parties terminated their agreement. (*Id.* at 14). Subsequently, plaintiff requested that the defendants shut down the website, and alleges that defendants refused to do so. (*Id.* at 16).

Plaintiff then filed an action in state court on February 11, 2014, against defendants asserting thirteen causes of action arising out of the above conduct. On March 7, 2014, defendants removed that action to this court. On March 12, 2014, defendants filed a motion to dismiss for lack of personal jurisdiction in that case. Defendants' motion was granted on April 28, 2014, and this court denied plaintiff's motion to reconsider the court's order on defendants' motion to dismiss on February 4, 2015. *See Dychiuchay v. Grieshaber et al.*, No. 2:14-cv-00354-JCM-GWF, 2015 WL

1 476195, at \*5 (D. Nev. Feb. 4, 2015).

2 On February 27, 2015, plaintiff filed suit in state court again, asserting fourteen causes of  
3 action arising out of the above conduct against the same defendants. (Doc. # 1-1). The causes of  
4 action in plaintiff's second suit include seven of the causes of action in plaintiff's original  
5 complaint, as well as seven new or expanded<sup>1</sup> causes of action. Defendants removed the action to  
6 federal court on March 26, 2015, under 28 U.S.C. § 1441. (Doc. # 1). On March 31, 2015, plaintiff  
7 filed a motion to remand the case back to state court. (Doc. # 5).

8 On April 17, 2015, defendants filed a motion to dismiss the case pursuant to FED. R. CIV.  
9 P. 12(b)(2) for lack of personal jurisdiction. (Doc. # 9). Defendants also filed a motion for sanctions  
10 pursuant to FED. R. CIV. P. 11 for filing a duplicative lawsuit. (Doc. # 11).

11 On June 15, 2015, this court granted defendants' motion to dismiss, having found that it  
12 lacked personal jurisdiction over the defendants. (Doc. # 20). On that date, this court also denied  
13 plaintiff's motion to remand the case back to state court as moot, and granted defendants' motion  
14 for sanctions, ordering that plaintiff pay defendants attorney's fees in the amount of 720 dollars.  
15 (Doc. # 21). Subsequently, defendants filed the instant motion for attorney's fees pursuant to NRS  
16 § 18.010(2), FED. R. CIV. P. 54(d)(2), and local rule 54-16. (Doc. # 22).

## 17 **II. Legal Standards**

18 Federal Rule of Civil Procedure 54(d)(2)(B)(ii) provides that a motion for attorney's fees  
19 must "specify the judgment and the statute, rule, or other grounds entitling the movant to the  
20 award." "A party moving for attorney's fees must therefore assert an independent source of  
21 authority for an award." *Assurance Co. of America v. Nat'l Fire & Marine Ins. Co.*, 2:11-cv-00275-  
22 JCM-GWF, 2012 WL 6626809, at \*1 (D. Nev. Dec. 19, 2012).

23 Pursuant to Local Rule 54–16(b)(1) and (3), a party's motion for attorney's fees must  
24 include "[a] reasonable itemization and description of the work performed," and a brief summary  
25 demonstrating, among other things, the time spent, skill required, novelty and difficulty of the

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27 <sup>1</sup> For example, plaintiff's original complaint included a cause of action for breach of  
28 contract. (See Case No. 2:14-cv-00354, Dkt. No. 1). In plaintiff's second complaint, plaintiff  
included two causes of action for breach of contract: one for breach of contract for payment of  
services and one for breach of contract for failure to terminate. (Doc. # 1-1).

case, and the customary fee charged.” The motion must also be accompanied by an attorney affidavit “authenticating the information contained in the motion and confirming that the bill had been reviewed and edited and that the fees and costs charged are reasonable.” LR 54–16(c).

### III. Discussion

Defendant now moves for attorneys’ fees under FED. R. CIV. P. 54(d)(2). Under Nevada law, attorneys’ fees are available only when “authorized by rule, statute, or contract.” *Flamingo Realty, Inc. v. Midwest Dev., Inc.*, 110 Nev. 984, 991 (1994). The decision to award attorneys’ fees is left to the sound discretion of the district court. *Id.*

In Nevada, a court may grant a motion for attorney’s fees:

[W]hen the court finds that the claim . . . was brought or maintained without reasonable ground or to harass the prevailing party. The court shall liberally construe the provisions of this paragraph in favor of awarding attorney’s fees in all appropriate situations. It is the intent of the Legislature that the court award attorney’s fees pursuant to this paragraph and impose sanctions pursuant to Rule 11 of the Nevada Rules of Civil Procedure in all appropriate situations to punish for and deter frivolous or vexatious claims and defenses because such claims and defenses overburden limited judicial resources, hinder the timely resolution of meritorious claims and increase the costs of engaging in business and providing professional services to the public.

NRS § 18.010(2)(b).

To support a discretionary award of attorney’s fees, “there must be evidence in the record supporting the proposition that the complaint was brought without reasonable grounds or to harass the other party.” *Semenza v. Caughlin Crafted Homes*, 901 P.2d 684 (Nev. 1995) (quoting *Chowdhry v. NLVH, Inc.*, 851 P.2d 459 (Nev. 1993)).

Defendants filed their motion in compliance with federal and local rules. However, the court finds that the plaintiff’s second complaint was not brought without reasonable grounds or to harass the defendants. Plaintiff states that her second complaint was made in a good faith effort to cure a defect in her prior complaint. (Doc. # 23 at 9). Plaintiff’s second complaint was not a mere duplicate of her first complaint, and it included attempts to correct deficiencies identified in her first complaint. The differences between plaintiff’s first and second complaints, coupled with her assertions that she filed the second action in a good faith attempt to correct the deficiencies in her previous case, contradict defendants’ allegation that plaintiff’s second complaint was filed without

1 reasonable grounds.

2 Furthermore, this court has already awarded the defendants sanctions in the form of  
3 attorneys' fees in this action. (Doc. # 21). Accordingly, this court finds that an additional award of  
4 attorney's fees is inappropriate, and defendants' request is denied.


5 **IV. Conclusion**

6 This court finds that an award of attorney's fees in this matter is inappropriate because it  
7 finds that plaintiff's second suit was not brought without reasonable grounds and this court has  
8 already awarded sanctions.

9 Accordingly,

10 IT IS HEREBY ORDERED, ADJUDGED, AND DECREED that defendants Grieshaber  
11 and Aradia's motion for attorney's fees (doc. # 22) be, and the same hereby is, DENIED.

12 DATED THIS 28<sup>th</sup> day of October, 2015.

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15 JAMES C. MAHAN  
16 UNITED STATES DISTRICT JUDGE  
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